

# ackgrounder

Heritage Foundation

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2/5/92

173

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## RECOGNIZING THE OBVIOUS, BUSH SHOULD DECLARE THE ABM TREATY DEAD

(Updating *Backgrounder* No. 867, "Removing the ABM Treaty Obstacle to U.S. and Soviet Defenses Against Missiles," November 15, 1991.)

In televised speech to the Russian people on January 29, Russia's President Boris Yeltsin called for the United States and Russia to "create and jointly operate" a global defense system. One day earlier, in his State of the Union address, George Bush affirmed his own commitment to strategic defense, or SDI. Washington and Moscow now both are on record in favor of deploying defenses against missile attacks. Then late last week, Yeltsin at the United Nations reaffirmed his Moscow statement. The common Bush-Yeltsin view is not surprising. Both of their countries face a growing danger of accidental, unauthorized, or irrational attacks from an expanding number of states armed with ballistic missiles.

What then of the increasingly outdated 1972 Anti-Ballistic Missile (ABM) Treaty banning the deployment of any serious defenses by the U.S. or the former Soviet Union? Given that the treaty is in legal limbo anyway due to the Soviet Union's collapse, and that it no longer serves the stated policies of either Moscow or Washington—which both want to move toward defenses—Bush simply should declare the treaty dead. He further can affirm his commitment to work with the Russians to reach agreement on a new Defense and Space Treaty that would encourage the cooperative deployment of strategic defenses.

The collapse of the Soviet Union, along with Yeltsin's expressed willingness to cooperate with America to develop and deploy strategic defenses, present America with an opportunity to abolish existing restrictions on defensive deployments and to move toward missile defense deployment in cooperation with Moscow. Already the Bush Administration is moving in this direction. According to news reports since confirmed by The Heritage Foundation, Under Secretary of State Reginald Bartholomew two weeks ago in Moscow presented Russian officials with a list of treaties to which it wants the former Soviet republics to adhere: the ABM Treaty was not on the list.

**Countering Cold War Holdovers.** There are signs, however, that despite Yeltsin's recent statements, Bush may run up against some opposition in Moscow to his plans for junking the ABM Treaty. While Yeltsin backs a cooperative U.S.-Russian program to deploy defenses, his speech to the Russian people also declared the ABM Treaty "an important factor" in maintaining "strategic stability," an argument long made by American arms control proponents and echoed by Moscow's foreign policy establishment. Many Cold War holdovers within this establishment, including the Director of the Institute of the USA and Canada Georgi Arbatov and much of the former Soviet Defense Ministry (now in Russia's hands), are advising Yeltsin against abandoning the ABM Treaty. Bush thus will have to educate Yeltsin on this issue. And Washington then will have to work with Yeltsin's younger defense and foreign policy advisors, those who made their reputations as supporters of Russian democracy, and not as servants of the Soviet state. They have no vested bureaucratic interest in keeping the ABM Treaty alive.

Bush will have to make three sets of arguments. The first is a policy argument: the ABM Treaty is a relic of the Cold War and is not suited to the post-Soviet world. SDI opponents long have argued that anti-missile

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deployments would fuel an arms race, with each side scrambling to deploy new offensive weapons to come the other's defenses. But in the new era of American-Russian cooperation, both sides are moving toward defensive deployments at the same time that they are making unprecedentedly deep nuclear arms. With the Soviet state gone, any fears of a wild arms race finally can be set aside. The policy behind the ABM Treaty assumed that only a very few countries would possess offensive basic missile technology is now over thirty years old and some twenty Third World nations could well possess it by the end of the decade. America and Russia have an overwhelming interest in protecting themselves against Third World missile arsenals, regardless of their bilateral military relationship.

**Outside of Russia.** The second argument for Bush to make is legal. Under international law, Russia scarcely can be considered a successor to the Soviet Union as party to the ABM Treaty. This is because many of the military facilities covered by the treaty, formerly within the boundaries of the Soviet Union, now fall outside Russian control. Examples: the former Soviet Union's main ABM test facility is located near Sary Shagan in Kazakhstan; two missile-tracking radars are located in Latvia, which is not even a member of the Commonwealth of Independent States (CIS). One of the central legal tenets governing treaty succession is that the successor state must be able to fulfill the obligations assumed by its predecessor. In the instance of the ABM Treaty, it is clear Russia cannot meet this test. As such, Russia cannot be a successor to the Soviet Union under the ABM Treaty, regardless of its desire to see the treaty upheld.

Finally, Bush should stress to Yeltsin America's sincerity and willingness to negotiate at the Defense and Space Talks (DST) talks in Geneva, a new treaty governing the deployment of strategic defenses, and in moving forward with Russia to deploy mutual strategic defenses that meet the defensive needs of both countries. America still has an interest in coordinating reductions in offensive forces with the deployment of strategic defenses. Such coordination will ensure that strategic stability is maintained during the transition to defenses. The other nuclear-armed republics of the former Soviet Union could be brought into DST, as well. These other states, including Byelorussia, Kazakhstan, and Ukraine, therefore might also be invited to participate in future DST negotiations, which then would become a multi-lateral forum. But assuming that Russia participates, the DST negotiations can and should go forward.

Given the Soviet collapse and the overriding American interest in deploying anti-missile defenses, Bush should announce that the U.S. no longer will observe ABM Treaty restrictions after six months. Since the treaty has collapsed and therefore is not being abrogated by the U.S., the six month notice of abrogation required by the treaty is not technically required. Nevertheless, six months notice should be given as a courtesy to Yeltsin, and to permit serious negotiating to begin on a new Defense and Space treaty.

**Assessing Successors.** At the same time, Bush should state that the U.S. position toward the ABM Treaty is part of an overall policy that addresses successorship to Soviet treaty obligations on a treaty-by-treaty basis. The ABM Treaty decision, therefore, will not prejudice subsequent judgments about which state or states should be considered successors to other treaties that it may be in the interests of the U.S., Russia, and the other CIS states to maintain.

The ABM Treaty and the policy of mutual vulnerability to missile attack that undergirded it are relics of the Cold War. With an ever-lengthening list of nations coming into possession of ballistic missiles, a serious argument cannot be made—as if it ever could—that continued vulnerability to nuclear attack is in America's interest. Besides, given the collapse of the Soviet Union, it would be extremely difficult to salvage the ABM Treaty even if it were considered prudent to do so. It is thus appropriate for Bush to declare the Treaty null and void and undertake negotiations with Russia, and perhaps other republics of the former Soviet Union, to reach an agreement governing the development and deployment of anti-missile defenses. This will bring to an end one of the most confusing and troubling legacies of the Cold War era, a treaty specifically designed to keep America vulnerable to attack.

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Accession Number: 3661

Publication Date: Feb 05, 1992

Title: Recognizing the Obvious, Bush Should Declare the ABM Treaty Dead

Personal Author: Spring, B.

Corporate Author Or Publisher: The Heritage Foundation, 214 Mass. Ave., NE, Washington, DC 20002-4999 Report Number: Heritage Backgrounder 173

Comments on Document: Heritage Backgrounder 173. Updates Accession Number U3659, Removing the ABM Treaty Obstacle to U.S. and Soviet Defenses Against Missiles, Heritage Backgrounder 867.

Descriptors, Keywords: ABM Treaty Bush Yeltsin SDI Cold War Strategic Stability DST Defense and Space Talks Restriction CIS Anti-Missile

Pages: 00002

Cataloged Date: Aug 04, 1992

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Document Type: HC

Number of Copies In Library: 000001

Record ID: 24418